



UK TRANSGENDER LAW: FACTSHEET 03

THE GENDER VARIANT CHILD'S RIGHT TO ATTEND SCHOOL

A Guide to UK Law for the Transgender Community,
Parents, & Schools



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UK Transgender Law Factsheet 03: The Gender Variant Child's Right to Attend School: A Guide to UK Law for the Transgender Community, Parents, & Schools

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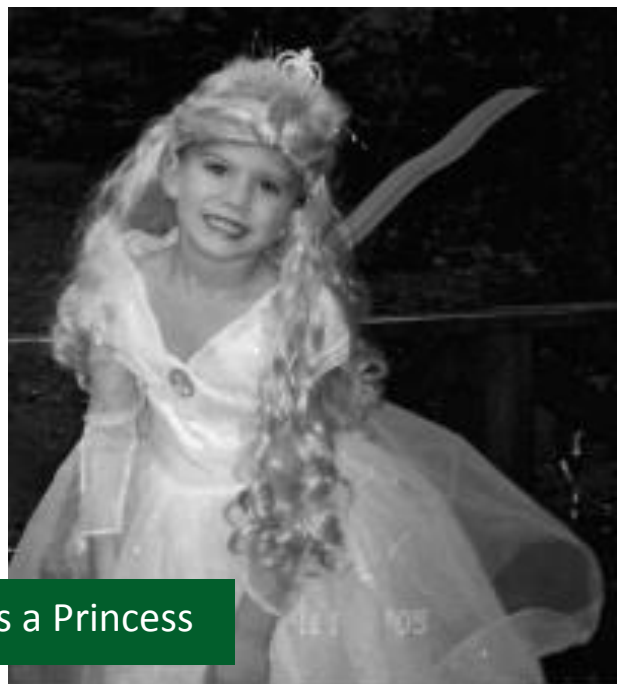
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A Parent's & Schools' Guide to the Gender Variant Child's Right to Attend School

A Guide to UK Law for the Transgender Community, Parents, & Schools

Professor Stephen Whittle, OBE, FAcSS, DLaws(hc), PhD, MA, LLM, BA



Brandon Sims aged 5, as a Princess

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About the Author

Stephen Whittle OBE, FAcSS, DLaws(hc) PhD, MA, LLB, BA, is Professor of Equalities Law at Manchester Metropolitan University where he has taught for 20 years. Stephen transitioned from female to male in 1975.

In 1992, he co-founded Press for Change (PfC), the UK's transgender lobbying group in 1992. PfC took many cases to Europe & in 1995, *P v S* (European Court of Justice) provided employment protection for Trans people in Europe. In 2002, the cases of *Goodwin & I v United Kingdom Government* (European Court of Human Rights) led to the Gender Recognition Act 2004 and the right for trans people to obtain legal recognition of their preferred gender role.

As principle researcher, he worked with Dr Lewis Turner to draw up the ER's Trans study, which led to the inclusion of full protection from discrimination or harassment for Trans people in employment and when accessing goods and services, in the Equality Act 2010.

Stephen has advised on transgender law to the UK, Irish, Italian, Japanese, and South African governments, the European Union, the Council of Europe, and the European Commission. He advises lawyers and writes briefs, or is an expert witness, for courts worldwide.

Stephen has received numerous awards for his work, including in 2007 the Lambda Literary Award for 'The Transgender Studies Reader' (with Susan Stryker, 2006, New York: Routledge) and in 2002, the Sylvia Rivera Award from the Centre for Lesbian & Gay Studies at the University of New York for 'Respect and Equality: Transsexual and Transgender Rights' (2000, London: Cavendish). In 2002, he received the Law Society/Liberty/Justice Human Rights Award from the UK's Human Rights Legal Profession, and in 2012 he received the Frank Kemeny Life Time Achievement Award (2010) from the North American LGBT Bar Association. In 2014, he was awarded the American Bar Association's Stonewall Award for his contribution to LGBT rights and the education of young lawyers. He also received an Honorary Doctorate in Laws from Sussex University. In the 2005, Queen's New Year's Honours list he was made an Officer of the Order of the British Empire (OBE, 2005) for his work on gender theory and rights.



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Pt. 1. Introduction and Glossary

1.1. ABOUT PRESS FOR CHANGE

Press for Change (PfC), is the UK's national campaign seeking respect and equality for all trans people.

PfC has been providing legal advice and support to transgender and transsexual (trans) people, and organisations since being founded in 1992 to address the legal problems faced by trans people in the UK. PfC has been actively involved in bringing cases before the European Courts as well as the UK courts, in order to obtain legal change about. Our work has resulted in successful wins at all levels of the courts.

Wins at the European Court of Justice in 1995, and at the European Court of Human Rights in 2002, led to PfC being invited to be the key stakeholder organisation in the drafting and development of the Gender Recognition Act 2004 and related guidance and services.

In 2007, PfC was invited to undertake original research for the Cabinet Office's Equalities Review. The research report contributed to the inclusion in the **Equality Act 2010** of comprehensive protection from discrimination, harassment, and victimisation in employment, and while accessing goods, services, housing and facilities.

Combined with the development of an education programme for legislators it has resulted in major changes in the law in UK law, which is now regarded as 'state of the art', and it has been copied as far afield as South Africa, Japan, Sweden, Argentina and Spain.

1.2. WHO IS THIS GUIDANCE FOR?

This advice guide is written specifically to provide **legal advice to schools** that gender variant children wish to attend, or are already attending.

The advice will also help **the parents of gender variant children** to know the

law relating to their child's right to attend school of the legal obligations that schools have towards these pupils.

This advice guide provides a comprehensive outline of UK law as it relates to the attendance at school of gender variant children and teenagers, and addresses issues that might arise for the school.

This guide focuses on the obligations schools now have under the Equality Act 2010, and the individual rights gender variant children have under the Human Rights Act 1998 and the European Convention on Human Rights.

This advice note will hopefully enable schools to realise their obligations to provide education on an equal basis to gender variant children, and it will hopefully enable them to address issues in advance that might otherwise affect the attendance of such children. Experience has shown that the attendance of a gender variant child in a school that is supportive, usually presents no problems, to either the school or the other children who attend. Where there might be a problem, we provide specific advice on how schools might address it.

1.3. A GLOSSARY OF TRANSGENDER LANGUAGE

There are commonly accepted ways of discussing the condition in which individuals experience a personal gender role identity at odds with that ascribed to them at birth. Many internet glossaries can help in understanding the terms.

Below we have included explanations of the most essential terms needed to understand this advice note.

Cross-Dressing: In children, and young adults, cross-dressing can be an indicator of the development of a transgender or transsexual identity. Both boys and girls may cross dress. Girls can wear more easily unisex style clothing, which closely resembles boys clothing without ostracism, whereas it is usually thought that most boys who wear unisex clothing or girl's clothing have a mental health problem or a sexual perversion. Severe punishment is often meted out to boys for this behaviour whereas girls will usually escape punishment. During puberty, many boys who cross dress will discover a sexual element to the practice, whereas it is rare for girls to do so. Increasingly there is an understanding that both behaviours can be an early indicator of the

development of a transgender / transsexual identity

Gender Dysphoria: Gender Dysphoria (see Gender identity disorder) Gender Dysphoria is the diagnostic requirement before a person can apply for a Gender Recognition certificate.

Gender Identity: is the psychological recognition, a person's internal perception, of being a person with (or without) a gender. This may or may not be the same as the gender assigned to the child at birth.

It is now increasingly recognised that gender identities can take many forms, for example man, woman, trans man, and that some non-western cultures have historically had more than two available gender identities.¹ Gender identity is often conflated with sex, however they are different concepts; sex refers solely to whether a **person (or animal) is male, female or intersex.**

Gender identity Disorder: (GID) (or Gender Dysphoria) A medical description of the condition of being transgender or transsexual.

Gender identity disorder is the formal diagnosis used by psychologists and physicians to describe persons who gender identity is different from that ascribed to them at birth.

Gender Reassignment: refers to

- the social process when a person commences living in their preferred gender role and identity, and
- the medical process by which a transsexual person makes physical changes to their secondary sexual characteristics, in order for their body to resemble more closely that of a person who normally presents with their preferred gender role and identity.

Gender Reassignment Surgery (GRS): The surgery that alters the sexual or other characteristics of the body so that it better resembles that of a person of the other sex. GRS is only one small part of the transition process (see **Transition** below). GRS is commonly used now, rather than 'sex change operation' or 'sex reassignment.' Not all trans people can have gender reassignment surgery, for health, financial or other reasons. Some will choose not to undergo part or all of the possible gender reassignment surgery

¹ For example, at the turn of the 20th century, the anthropologist Walter Borgoras discovered a native Siberian Inuit tribe, the Chuckchi, who had 9 gender roles into which children grew into. Two of these roles would represent what we now know of as trans people.

available.

Gender Role: refers to the personal social presentation of those aspects of the self, including behaviours, thoughts, dress and mannerisms expected and used by others to determine whether a person is feminine, masculine, or androgynous. The portrayal of one's gender role is usually the way a person presents themselves to the world as a man or a woman.

Gender Variance: When children express a wish to change their gender, the term gender variant or variance is mostly used by professionals in the field. The development of the term 'Gender variance' was to ensure that we do not give the 'surgical goal driven' label of being 'transsexual' to young children who have cross gender behaviour. 'Transsexual' assumes a desire for body altering medical intervention.



**The Transgender
Symbol**

When children and teenagers are still in their developmental stages of life, and their expressed gender identity is still potentially subject to change, it is important to give them the freedom to change their expressed gender if appropriate. Gender variant has become the accepted term for those children who express a desire to be a member of the opposite gender, or of neither (agender) or of both genders (bi-gender or genderqueer).

It has been suggested that it would be more appropriate to refer to children as being gender diverse or gender non-conforming, as the term variance assumes that there is a 'gender norm'.

However, the binary gender norms we think of are actually the consequence of the history of Western-European, patriarchal, socio-economic, cultural norms, and that other societies have had other gender systems.

Research has shown that only 20% of those presenting as young children at gender identity clinics have chosen to go on to seek gender reassignment.

However, it should be born in mind that until very recently, parents only considered 'sissy boys' to have a problem that needed a doctor's attention. It was rare for parents to take a tomboy for medical help; they assumed 'she would grow out of it'.

Transgender: An umbrella term (adj.) for people whose gender identity and/or

gender expression differs from the sex assigned at their birth. The term may include but is not limited to transsexual people; it can also include people who cross-dress and other gender-variant people.

Transgender people may identify as female-to-male (FTM) or male-to-female (MTF). In the UK, it is usual to shorten the term to 'Trans'. Trans people may or may not decide to alter their bodies hormonally and/or surgically.

Transition: Transition is a process. It starts on the day a child or adult commences living either partly or permanently in their preferred gender role, with the intention of permanently doing so either now or at some point in the future, for the remainder of their life.

Transition includes some or all of the following personal, legal, and medical adjustments; telling family, friends and/or co-workers; changing one's name and/or gender on legal documents; hormone therapy; and possibly (though not always) one or more forms of surgery.

Transition ends when the person has completed, what will be for them, all of the processes including any medical treatments, of gender reassignment. It can take many years for most people to complete transition.

Trans man / Trans men: People born female bodied but who have a gender identity like that of a man.

Erik Schinnegger, Trans Man, former world champion women's downhill skier in 1966, as Erika. Eric also has an intersex condition, but few intersex people will want to change their gender as Erik did. Erik now runs a successful Ski School see <http://www.schinegger-erik.com/>

Trans woman / Trans women: People born male bodied but who have a gender identity like that of a woman.





Michelle Dumaresq, Trans woman. Michelle is a professional downhill mountain bike competitor, and winner of the women's 2003 Canadian National Championships.

Transgender Community.

Transphobia: Transphobia is an emotional disgust leading to an irrational reaction toward individuals who do not conform to the socio-cultural ideology or norms of gender conformity. Stigmatising attitudes, such as homophobia or transphobia, usually occur when a person's physical appearance as a man or a woman is at odds with their gender role presentation.

Those people who are visibly trans, for example those who have just commenced transitioning to their preferred gender role, or those who do not 'pass' in their preferred gender are more likely to experience transphobia than people who are not visibly trans. This includes non-trans people who do not conform to cultural norms of gender.

Transphobia can lead to social exclusion and ostracism, verbal, and physical harassment, criminal assault and in the most serious cases, has resulted in the murder of the person and those who associate with them.

Transsexual Person: Transsexual is a term originating in medicine and psychology. While some transsexual people still use the term to describe themselves, many people now prefer the terms *trans* man or *trans* woman. Unlike the word transgender, transsexual is not an umbrella term - many self-identified transgender people do not identify as transsexual. **It is best to ask which term an individual prefers.**

A transsexual person will seek medical and/or surgical reassignment treatments, if available, which change the secondary sexual characteristics of their body to more closely resemble that of a person who has the preferred gender identity ascribed to them at birth.

Transvestite: (see *cross-dressing* above) Often used in a derogatory way to refer to a person who occasionally, for shorter or longer periods, wears the clothing usually worn only by people of the opposite sex. In adulthood, cross-dressing is most often the activity of heterosexual men who do not wish to live in the opposite sex or gender role. Cross Dressing is a common activity, with figures estimated at between 1 in 10 and 1 in 100 men cross dress during some periods of their life.

When adolescents cross dress, it will often have a sexual element. However, as they grow older, most cross dressers find it becomes a social activity, or a form of comfort and a stress relief. Some men will cross dress throughout their life. Most will not wish to undergo gender reassignment.

However, cross-dressing may be a precursor to a child or an adult declaring a transsexual identity. Occasionally a child or adult who has never previously cross dressed may declare a trans identity, the fact that they do not have a history of cross dressing does not indicate that there strength of certainty is any less, and their transition to living as a member of the opposite sex can be just as successful.

Pt. 2. Gender Variant Children

2.1. MEDICAL ASPECTS OF GENDER VARIANCE

Since the late 1970s there has been increasing recognition that some children are very unhappy in the gender role ascribed to them at birth. In 1980, a separate diagnosis of Gender Identity Disorder of Childhood was introduced in the DSM IIR, the American Psychiatric Associations Diagnostic Manual

This was followed by its inclusion in the ICD 10, the WHO's psychiatric diagnostic manual. In children, the diagnosis must include the presence of at least four of the following symptoms:

- Repeated insistence that he or she is the opposite gender, or desires to be the opposite gender
- Persistent preference for cross-gender roles during play or persistent fantasies of being the opposite gender
- A strong desire to play stereotypically gendered games
- A strong preference for friends and playmates of the opposite sex
- In **boys**, an insistence on dressing in stereotypical female clothing
- In **girls**, an insistence on dressing in stereotypical male clothing

Clinically, children with gender identity disorders tend only to be seen after the behaviour has been of significant duration. Parents do not seek help until they feel the behaviour is no longer 'a phase'. Parents will more often seek clinical help for boys, rather than girls, because the social stigma associated with sissy behaviour is far greater than that associated with girls who are tomboys.

There has been no large scale study of the incidence of childhood cross-gender identification, however research in the UK, has held that 6 in 1000 people experience being transgender during their life.

Clinical psychologist and psychotherapist, Dr. Peggy Cohen-Kettenis is currently head of the **Dept. of Medical Psychology** and director of the **Centre of Expertise on Gender dysphoria at the University of Amsterdam**.

In 1987, she initiated the **first Gender identity clinic in Europe for children and adolescents** with gender dysphoria at the University Medical Center in Utrecht. In 2002, the clinic moved to the VU University Medical Centre to become part of the larger **Amsterdam Centre of Expertise on Gender Identity Disorders**.

The clinic was amongst the first to provide pubertal postponement treatment, to prevent temporarily the advancement of pubertal changes to the body, allowing gender variant children to be free from the distress caused by their changing body, and giving them time to concentrate on schoolwork, family and friends.

In 2011, **a follow up clinical study of 53 children** (who responded out of a group of 77 children) who had been referred in childhood to the clinic because of a gender identity disorder, found that at age 16, 57% (17) of the boys and 41% (12) girls) still had persistent gender dysphoria.

The respondents said they found the ages to 10 to 13 years of age to be crucial. It was in this period that they became increasingly aware of the persistence or not of their gender identity disorder. Changes in their social environment, the anticipated and actual feminisation or masculinisation of their bodies, and their first experiences of falling in love had influenced their gender related interests and behaviour, feelings of gender discomfort and gender identification.

Almost all of the children (whether their gender identity disorder persisted or not) had found:

It was at the age of 6/7, that they started to identify with the other sex, to express a wish to be the other sex, and to feel uncomfortable with being a boy or a girl

That classmates had tolerated their gender atypical behaviour. Negative experiences were attributed to children who were not familiar with them, rather than to classmates.

The difference between those children whose gender identity disorder persisted, and those for whom it did not, was whether they explicitly indicated that they felt they were the other sex. Those who indicated only that they identified as a girlish boy or a boyish girl, and who only wished they were the

other sex, had found their wish to become a girl or a boy had waned somewhat, but not necessarily completely. Researchers found that gender identity disorder persisted beyond puberty for those adolescents who claimed they were a member of the opposite sex (even if they understood that biologically they were not) .

Between the ages of 10 and 13, during the period of change in their environment and pending puberty, at the end of elementary school or at the start of high school, is when most of the children with persistent gender identity disorder inform others. They might tell classmates, family, or even teachers about their gender dysphoria and their plan to transition to living as their preferred gender role.

By this age, most of gender variant girls were already wearing boys' clothing all the time, and would use a male nickname, and so were much more open in their behaviour before their actual social transition to the preferred gender. Therefore, it is mostly boys, who experience this 'coming out' with relief. Their affirmation of their female gender identity to others becomes the start of their looking forward, effectively the emotional commencement of a transition to their new life. When able to transition to their preferred gender role in school, boys did so gradually, initially letting their hair grow, before starting to wear some girls' clothing before finally adopting a girl's name.

However, it was also between the ages of 10 and 13 that children, primarily classmates, started to question and criticise the adolescents' gender variant behaviour. However, those classmates who had been educated about gender identity disorder were more tolerant and accepting of their classmates' transition.

Boys were primarily the bullies of both gender variant boys and girls. Girls were much more likely to ignore the gender variant child than bully or tease them.

Overall, parents and relatives were supportive. If anything, they found a child's admission of gender variance explained what was previously seen as problematic extreme cross-gendered behaviour.²

The Amsterdam clinic has found that trans children who have a supportive environment at home, school and amongst their friends children with gender identity disorders are more capable of determining whether or not they wish to

² (Steensma, et al., 2011)

progress to full gender reassignment.

To date, few children under the age of 8 have taken part in clinical trials or studies, or in fact have transitioned whilst at school. As such, it is not possible to state what their future preferences will be in relation to their gender, if allowed to transition whilst at school. However, anecdotally parents and schools report a significant improvement in the school performance, of primary school children with gender identity disorder. They also report that the children are happier and more content at home and school, and have a larger friendship group than before their transition.

2.2. NHS TREATMENT OF GENDER VARIANT CHILDREN IN THE UK

The Royal College of Psychiatry Guidance for the management of gender identity disorders in children and adolescents. (1998) states:

This should be addressed in the context of adolescent development. Identity issues and beliefs in adolescents are complex. They may become firmly held and strongly expressed. This may give a false impression of irreversibility; more fluidity may return again at a later stage. For this reason, i.e. the possibility of change of outcome, and because the effect of early physical and hormonal treatments are unknown, physical interventions should be delayed as long as it is clinically appropriate. Before any physical intervention is considered, extensive exploration of the issues to do with the psychological, family and social network aspects should be undertaken.

Pressure for physical interventions because of an adolescent's level of distress can be great and in such circumstances, a referral to a child and adolescent multi-disciplinary specialist service should be considered.³

It is clear from feedback that some young people have obtained pubertal postponement treatments in recent years. These may have been obtained through private practitioners, or by attending clinics overseas. For some parents, they have pursued these options, when it seems that the alternative has been that a child's life quality will deteriorate to the point that they become suicidal without such treatment.

³ (Royal College of Psychiatry, 1998)

The West London Mental Health Trust, which provides the UK's largest adult clinical service at the West London Mental Health Trust Claybrook Gender Identity clinic states in guidance for GPs:

Gonadotrophin Releasing Hormone Analogue (GnRH analogue) is used to reduce the distress commonly associated with pubertal physical development and provide a space for the young person to continue to consider whether full transition is their pursued objective. There is a particular emphasis on ongoing supportive counselling and psychological input, and any stage of the process can last as long as is deemed necessary by the young person, with input as appropriate from family and treating clinical team.⁴

2.2.1. A Legal Right to Pubertal Postponement?

The Australian courts have extensively addressed the question of treatment for children, and though not in any way binding, the decisions are clearly able to be used as advisory (as we both have a common law system)

In the earliest of the Australian cases, **Re. Alex, [2004]** the Family Court of Australia allowed a 13 year old girl, 'Alex', to begin pubertal postponement treatment to start the process to becoming a boy.⁵

Evidence was given that the child said they would rather be dead than go on as they were (as a girl). The court held that that was not a viable alternative, and as such it was far better that the child be given pubertal postponement treatment than commit suicide.

In the most recent case **Re. Jamie** (2011), the Australian Family Court allowed a 10-year old boy, known as 'Jamie' to begin puberty postponement treatment, as he wished to be a girl.⁶ The Court gave as its reason for making this decision when a child is as young as 10, that in this child puberty was very advanced and treatment needed to be started before the voice broke, there was beard growth or early onset hair loss developed.

Justice Linda Dessau did not approve the second stage of treatment i.e. female hormones treatment, which lead to breast development etc. saying that things

⁴ (West London Mental Health Trust, 2012)

⁵ Re Alex, [2004] Fam CA 297 acc. 15/05/2013 at

⁶ Re. Jamie (Special Medical Procedure) [2011] Fam Ca 248 a

might change:

I simply cannot determine in 2011, when Jamie is still only 10, what is likely to be in her best interests in 2016 or 2017 when she is aged sixteen.

However she noted that she had recently approved both pubertal postponement and gender reassignment hormone therapy in two other recent decisions, the difference being that the young people involved were both aged 16 and the second stage of treatment was expected to begin shortly after pubertal postponement was commenced.⁷

2.2.2. The Legal Position on Pubertal Postponement in the UK

The logic of the Australian case of **Re. Alex** was clear; better to try a fully reversible treatment rather than risk the child ending their life.

If the parents or guardians of a gender variant child refuse to allow pubertal postponement treatment, there is reason to believe that a UK court would have little hesitation in making a child a ward of court to facilitate treatment, if a child is otherwise suicidal.

If the parents or guardian support a child in their desire to for pubertal postponement, as otherwise the child demonstrated suicidal tendencies, the courts would find it difficult not to order a doctor to provide the treatment.

Since May 2012, the Tavistock Portman Childhood and Adolescent Gender Identity Service Clinic in London has been providing pubertal postponement treatment for carefully screened adolescents. The treatment effectively blocks the hormones causing natural puberty. A prescription of Gonadotrophin releasing hormone analogue (GnRHa) suspends the child's pubertal progression, stopping the development of secondary sex characteristics including, for natal girls; menstruation and breast development, and for boys; beard and body hair growth, baldness and the voice breaking. Provided under a carefully controlled research protocol; this treatment is fully reversible. There is no set age for inclusion; evaluation of each child is on an individual basis.

If a child demonstrates a strong gender variant identity, the usual advice to parents is that they seek an immediate referral to their local child and adolescent services where they can request an immediate referral to the

⁷ Re. Jamie (Special Medical Procedure) [2011] Para 120.

2.3. UPDATE JUNE 2013: NHS ENGLAND TREATMENT PROTOCOL

As of October 2013, there is a provisional protocol for gender reassignment treatment.

This provides that children and young people experiencing gender identity disorder will be considered on an individual basis by their gender identity clinic.

Self-Referral or GP Direct Referral

In this Protocol, the patient can **self-refer to a Gender Identity Clinic** or be **directly referred by their GP**; they do not have to be referred through the local psychiatric services (saving a considerable amount of wasted money for the NHS).

Gender Identity clinics must always first ensure patients meet the **eligibility** and **readiness** criteria as adapted from the **WPATH Standards of Care v.7⁸** before taking the decision to refer the appropriate clinician.

The Protocol has the following **eligibility** criteria for the prescription of cross-sex hormones:

1. Persistent, well-documented gender dysphoria;
2. Capacity to make a fully informed decision and to consent for treatment;
3. Aged at least 16
4. If significant medical or mental health concerns are present, they must be reasonably well controlled.

At present, specialist gender identity development services for children and young people under 16 are not available in Scotland. Under the Scottish protocol, children and adolescents in Scotland should contact their GP in the first instance and thereafter may be referred to the Gender Identity Development Service at The Tavistock Portman NHS Foundation Trust. As such from May 2013, until further notice, children and teenagers in England can ask to be referred in the same way.

As the **Equality Act 2010** covers the entire United Kingdom, if an NHS trust, or a

⁸ (Coleman, et al., 2011)

Gender Identity Clinic, insists a child or teenager is assessed by a local psychiatric specialist first, they could have committed an act of discrimination, this would certainly not be complying with their public sector duty to promote equality.

2.4. CAPACITY TO CONSENT TO GENDER REASSIGNMENT TREATMENTS

2.4.1. Children Under 16

In young children it is a legal requirement that a parent or guardian consents for any health treatment, including diagnosis, that a child undergoes. Yet as children grow, following the case of **Gillick v West Norfolk and Wisbech Area Health Authority** [1986] the law allows them to start to make their own decisions and give consent as they grow and become more capable of understanding a treatment.⁹

In the case of **Gillick v West Norfolk and Wisbech Area Health Authority** [1986] Mrs Gillick attempted to prevent clinicians from providing birth control to girls, in particular her daughters, under the age of 16 without first informing the girl's parents. Lord Fraser, in the House of Lords, dismissed Mrs Gillick's case saying:

Whether or not a child is capable of giving the necessary consent will depend on the child's maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as **true consent**. (Ld. Fraser in Gillick [1985])

Lord Scarman clarified further the requirements of what has effectively become the test for Gillick competence, to determine whether a child is giving **true consent**. A doctor must ensure that

...it is not enough that s/he should understand the nature of the advice which is being given: s/he must also have a sufficient maturity to understand what is involved. (Ld Scarman in Gillick [1985])

As such, in order to be capable of giving consent, a child under the age of 16 is

⁹ Gillick v West Norfolk and Wisbech Area Health Authority [1986] 3All ER 402

required to have more maturity than a competent adult needs in order to give consent, because adults are not required to understand what is involved in the treatment.

A child will need to have an understanding of the specifics of the treatment; how it is given, and all of its possible consequences. If they cannot understand these things, then the child's parents must provide consent.

However, Ld. Scarman clarified the declining role and duties of parents in a child's life, as a child grows and develops:

Parental right yields to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision. (Ld Scarman in Gillick [1985])

A child's understanding is a developing process, and effectively a bright child between the ages of 12 and 15, for example, could consent to pubertal postponement treatment without their parent's involvement. The ability for a child under the age of 16 to provide consent for treatment is an assessment the treating clinician has to make, **not** the parents.

[**Note:** The Gillick test is not to be confused with the Fraser guidelines that only relate to the provision of contraceptive treatment, unlike the Gillick Competence Test, which can be used in relation to any aspect of medical treatment].

2.4.2. Adolescents Age 16 or 17 & Consent

The **Family Law Reform Act 1969, s. 8** allows 16 and 17 year olds to consent, as if an adult, to surgical, medical and dental treatment which otherwise would constitute a trespass to his person, and parental consent is not needed in these circumstances. This includes any diagnostic procedure or any ancillary treatment, such as administration of an anaesthetic if needed to carry out the treatment.

Under the Scottish Protocol 16 & 17 year olds can consent to gender reassignment treatments and as such, their diagnostic assessment, hormone or surgical treatments should follow the standard adult protocol. Parents cannot over rule the Gillick competent child's consent.

The **Children Act 1989. s105 (1)** draws a clear line between childhood and adulthood on a person's 18th birthday,¹ so that in healthcare matters an 18 year old enjoys as much autonomy as any other adult.

The Tavistock Portman Gender Identity Service

The Tavistock Portman Gender Identity Service sees children and young people (up to the age of 18) who are experiencing difficulties in the development of their gender identity. This includes children who are unhappy with their biological sex. The service works with the child, and their family, with the central aim of supporting the child's development of a confirmed, stable and contented gender identity.

The Service also see children who have a transgender or transsexual parent, who might need help with adjusting to the change in their mum or dad. The service often provides expert court advice in divorce cases where a parent is transgender or transsexual, and this is causing difficulties in reaching settlement particularly in relation to residence and access issues. Based at the Tavistock and Portman NHS Trust, this is an NHS service that takes referrals from all over the UK.

Staffed by a multi-disciplinary group with contributions from child and adolescent psychiatry, psychology, social work, psychotherapy and paediatrics, the team works closely together to make the most of their different skills and expertise. The team pay attention to what is happening within the patient's relationship with the family, school and other social agencies and they will often arrange to visit the schools of the children who attend the clinic.

Further information at:

<http://www.tavistockandportman.nhs.uk/childrenyoungpeoplegenderidentityissues>

Pt. 3. Understanding Gender Variance

3.1. GENDER VARIANT IDENTITIES

Gender identity is something that everyone has. Most people never think about their gender identity, however it is now acknowledged that in all cultures, a minority of people have found that their gender identity to be at odds to that expected from their birth sex. Throughout history, these people have invariably found ways to live as a member of the preferred gender. In some cultures, such as amongst Native Americans and some African cultures, they were privileged and recognised as magical healers and religious shamans. In others including Western Europe, they were persecuted as heretics and severely punished by the criminal justice system of the day, many were executed prior to the 19th century.

The last twenty years have seen significant changes in our scientific and medical understanding of how an individual's gender identity is developed.

The aetiology of a person's gender variant identities is still unknown. It has long been accepted that the discovery of a single cause is highly unlikely. However, scientific work undertaken since the late 1990s has shown biological markers in the sex dimorphic nuclei of the brains of trans people, and other genetic differences that could only arise during the foetal development, increasingly indicating a possible biological basis for a person's experience of a variant gender identity.

Consequently, mid-20th century psychiatric theories have begun to fall out of favour, leading to the clinicians within the World Professional Association for Transgender Health (see www.wpath.org) to recognise the recent scientific, social and legal changes, when they released a statement in May 2010 urging the de-psycho-pathologisation of gender nonconformity worldwide, saying:

the expression of gender characteristics, including identities, that are not stereotypically associated with one's assigned sex at birth is a common and culturally diverse human phenomenon [that] should not be judged as

*inherently pathological or negative.*¹⁰

In the 21st century there has been a significant growth in the number of people, including children who are coming forward and presenting as having a gender variant or trans identity. The reasons for this are manifold, but undoubtedly access to information, visibility, and the increasing social and legal acceptance of trans people is making it possible for people to ‘come out’ at earlier ages, and in social settings, such as families, where they would have faced ostracism and punishment in the not too distant past.

Studies with children have shown that an awareness of having a personal gender identity does not develop until a child reaches the age of 36 months or so. However, any time after that age, a child or adult may express a gender role identity at variance with that ascribed at birth.

3.2. GENDER VARIANT CHILDREN IN SCHOOL

Whilst this guidance is specifically directed towards schools who know they have a gender variant pupil, it is actually relevant to **all schools**. Whether they have any trans identified or gender variant pupils, yet recent research has shown that in any school of 1,000 pupils there are likely to be 6 who will experience being transgender throughout their lives.

Most schools or colleges will not know it is still the case though, that many children or teenagers will be frightened to admit that they are not happy in their ascribed gender, as they will have become aware at a young age that gender variant behaviour is not acceptable to one or more of their parents, or their peer group. Most trans identified children or teenagers do not tell their parents, their friends or their teachers of their desire to live in a different gender. They may well be very unhappy, but most will do their best to cope whilst they wait until they leave school, and usually, also leave home before they will approach anyone for advice or support in order to transition to living in their preferred gender role.

As such, all schools should be aware that they could have pupils who are transgender identified, or pupils whose parents or other members of their close family are transgender – it will be just as distressing for those children to hear transphobic remarks as it is for ethnic minority children to hear racism

¹⁰ (Coleman, et al., 2011) p 168

tolerated in school.

Research has shown that the 47% of boys and 64% of girls with gender identity disorder experienced bullying at school from peers and/or school staff.¹¹



Commonly, pupils and sometimes teachers will insinuate that boys who seem effeminate will want a ‘sex change’. In fact, almost certainly most will not, (however, they may well grow up to be gay).¹² Instead, data shows a high proportionate numbers of transgender males in the armed services and in masculine industries.

Referred in the scientific literature to as the ‘**Flight into hyper-masculinity**’,¹³ boys who are gender variant but who fear a lack of acceptance will often successfully mask their gender variance, often playing boys sports successfully at school. Many will go on to join the armed services or police, some even becoming significant ‘captains of industry’ before they finally admit their need to live in the gender role they feel comfortable with.

There has been little comparative research with girls. Clearly most tomboys do not grow up and express a desire for gender reassignment. However, those who do have said that it was extremely difficult for them to pretend to ‘like

¹¹ (Whittle, et al., 2007)

¹² (Wallen & Cohen Kettenis, 2008)

¹³ (Brown, 1988)

being a girl’.

Schools need to be aware that if a child who ‘changes’ their gender role, they may later discover, like some adults, that they are not happy with the decision they have taken.

It is important when working with staff and children on gender identity issues to acknowledge that this can happen.

As much effort should be made to allow a child to successfully return to living in their ascribed birth gender role, as was given to them on initially changing their gender role.

It is very important that the child understands that if they ever wish to **‘transition back’** to their ascribed birth gender, they will have their parent’s and the school’s full support, and that nobody will be at all disappointed if they decide to do that.

Without giving careful attention to this, it can prove to be very difficult for the child who may feel they are ‘letting people down’ if they express a wish to change back.

Without that acknowledgement, a child may well become too frightened of the consequences of a further change, bearing in mind all of the effort, work and support they have seen given to them when making their original gender change.



Left: Jack Green as a boy being taken to school,

Right: 18-year-old Jackie Green who underwent gender reassignment surgery at the age of 16. After four suicide attempts, Jackie’s parents agreed to her commencing hormone therapy at age 14, so avoiding the worst of the masculinising effects of male puberty. Jackie successfully transitioned at school and her parents paid for her to undergo gender reassignment surgery in Thailand, as it is not available in the UK until a person is 18.

Pt. 4. Part 4: Gender Variance, School and the Law

4.1. INTRODUCTION: OBLIGATIONS AND RIGHTS

There are now numerous UK schools and colleges which have successfully allowed children and teenagers to attend school in their preferred gender role without disruption either to their education or the education of others in the school. There are now also many examples of teachers who have transitioned in school without causing harm to the children in their care.

For schools to understand their role in the development of gender variant children, below we address the relevant aspects of UK law and explain how schools should respond to the request that a child attend in their preferred gender role. We cover:

- the obligations that arise under the Equality Act 2010 including the Public Sector duties which apply to all public sector bodies including schools, and
- the individual rights that each child has under the Human Rights Act 1998 which has embodied the provisions of the European Convention on Human Rights in UK Law,

4.2. THE EQUALITY ACT 2010

The **Equality Act** 2010 restates that schools cannot unlawfully discriminate against pupils because of their sex or gender, race or ethnicity, disability, religion or belief, sexual orientation.

Gender Reassignment has now been added to this list.

Protection **commences when** a person says they **wish or intend** to undergo gender reassignment. Protection from discrimination or harassment continues from the point they express their wish or intention, forward throughout the stages of their life i.e. during the time

- a person is awaiting initial clinical assessment, or

- a person transitions to living permanently in their preferred gender role, or
- a person who commences any chosen gender reassignment treatment, or
- a person undergoes any chosen gender reassignment treatment, or
- a person has completed their chosen process of gender reassignment treatment.

Protection will then continue throughout their life, even if they no longer personally identify as transgender, instead seeing themselves to be completely a person of their preferred gender (their new sex).

- This includes a child who says they wish to attend school in a preferred gender role, different to that ascribed at birth, because they “want to be a boy or a girl”.

4.3. ORGANISATIONS AND THE EQUALITY ACT 2010

The Obligations of organisations, in the Equality Act 2010 arise at the point when a person **INFORMS** the organisation that:

They are intending to undergo, or

They are undergoing or

They have undergone Gender reassignment.

The Act ensures that Trans people are afforded Protection from discrimination and harassment **in Employment**, and whilst **accessing Goods, Services, Facilities or Housing**.¹⁴

There is also protection from **Harassment, Association, and Victimisation**, even when a person is not trans, but they are **Perceived** to be trans.

The Act protects trans people from:

- **Direct Discrimination** which means treating a person unfavourably compared to others, because they are Trans.

¹⁴ There are exceptions, but they will only apply in the very rare circumstances, for example where the employer is the armed services, or an employer or service provider provides only single sex services.

- **Indirect Discrimination** which means putting in place a rule or policy or way of doing things that has a worse impact on someone who is Trans, when this cannot be objectively justified.
- **Harassment** which includes any unwanted conduct related to a person's Trans status which has the purpose or effect of violating their dignity or which creates a hostile, degrading, humiliating or offensive environment for the Trans person.
- **Victimisation** which is treating a Trans person, or someone associated with a trans person, unfavourably because the Trans person has taken (or might be taking) action under the Equality Act, or for supporting a trans person who is doing so.
- **Discrimination or Victimisation** because of association which is when a person is treated unfavourably because they are in some way associated with a trans person.

Perceiving someone as being Trans (viewing a person as someone who is having a 'sex change') and treating them in any of the above ways is also unlawful, even if the person is not intending to undergo or has not undergone gender reassignment treatment.

EMPLOYERS AND SERVICE PROVIDERS are responsible for ensuring that their **workforce is trained** and has the tools and skills to ensure that trans people are treated fairly, with respect and dignity, **according to the Law**

4.4. SINGLE SEX SCHOOLS

Under the provisions of the **Equality Act 2010**, a school has no basis on which they can refuse that child's attendance. The only exception exists for schools that cater to a single sex grouping only.

In which case **the Equality Act 2010, Sch. 3, Pt. 7, Gender Reassignment, S.28** provides an exemption to the general prohibition of gender reassignment discrimination.

Discrimination in these circumstances has to be objective, i.e. a proportionate means of achieving what is a legitimate aim. It would be undoubtedly be held as reasonable for a Girls' only school to advise a gender variant child and their parents, that if the child wishes to attend school as a boy, they will need to find

another school.

4.5. WHAT IS MEANT BY GENDER REASSIGNMENT?

Historically, Gender reassignment medical treatments have formed the basis of a process by which a person 'changes sex'.

That view has changed in recent years, as our increasing and new understandings of what is meant by a person's gender identity and what it means to them, has led to new scientific and medical understandings.

The **Explanatory notes** to the **Equality Act 2010** advise that 'gender reassignment' is now to be thought of as a social rather than a medical process.

Gender reassignment treatment, especially surgery is intensive and can very demanding on the body. Though it carries very few risks for a healthy and able-bodied young person, it is not completely without consequence. It is also a developing treatment. In the UK, there are very few specialist surgeons practicing gender reassignment surgeries.

Consequently, there are long waiting lists for gender reassignment surgery. Some trans people will have reached a personal accommodation with their transgender body by the time they arrive at their place on the list and they may choose to forgo the surgery.

For Example; surgery to create a neo-phallus for trans men has only been available in the UK since 2000. Even now, it is a continually improving process, and still requires several operations and periods of hospitalisation. The current waiting list for such surgery is several years and frequently the surgical team will close the list whilst they try to catch up.

Only about 25% of adult trans men in the UK will seek this surgery. They may not have jobs that allow them to take long periods off work. They may not have the personal support they would need during long periods of convalescence. Most will opt to wait until they have such systems in place before considering whether they will undergo such intensive surgery. They may then find the decision will become as much their partner's as theirs. Many will have found their own inventive ways around the lack of a penis in their relationship, and it no longer becomes a priority.

The UK government was the first legislature to acknowledge that gender identities are complex and not necessarily dependent upon the genitals a

person has.

As such, the Gender Recognition Act 2004 allows for legal recognition of a trans person's preferred gender, without requiring individuals to undergo medical treatments or surgery, nor permanent sterilisation, before applying for recognition.

Recognised as 'state of the art' legislation, Argentina, Spain, South Africa, Japan, Australia, and Sweden have all copied the Act.

To Sum Up: Not everyone undergoing gender reassignment will want or need medical treatment.

A person who wishes or intends to live their life in a gender role, different to that one ascribed at birth, no longer needs to seek medical advice or medical reassignment procedures in order to gain protection from discrimination or harassment.

Why Medical or Surgical Treatments for Gender reassignment are not compulsory for legal protection or legal Gender Recognition.

When initially considering the question of trans people's rights, the UK government acknowledged that long NHS waiting lists for treatment meant many people were living in their preferred gender role for several years before they could access gender reassignment hormone therapy or surgery. It was also acknowledged that for those who were elderly or who had serious chronic health concerns, including some people, with disabilities, some or all gender reassignment treatments might prove to be of serious risk to their health or wellbeing.

Finally, the government acknowledged that after waiting for long periods of time to access gender reassignment treatment, transsexual people who have already successfully transitioned to living in their preferred gender role, may well have found they are content with just hormone therapies. Some may even no longer desire some or all of the possible gender reassignment surgeries, in order to live their lives happily and successfully.

Pt. 5. Schools and the Equality Act

The **Equality Act 2010, Pt.6, Education, Ch. 1, Schools: s 85**, states that schools must not discriminate (or harass or victimise) against a child who wishes to attend school in their preferred gender in any of the following ways:

- in the arrangements it makes for deciding who is offered admission as a pupil;
- as to the terms on which it offers to admit the person as a pupil;
- by not admitting the person as a pupil;
- in the way it provides education for the pupil;
- in the way it affords the pupil access to a benefit, facility or service;
- by not providing education for the pupil;
- by not affording the pupil access to a benefit, facility or service;
- by excluding the pupil from the school;
- by subjecting the pupil to any other detriment.

The Act is quite clear; schools cannot refuse to provide education to gender variant children who wish to attend school in their preferred gender role.

Schools whose staff or systems:

- discriminate against a gender variant child in any of these ways, or harass such children, or
- which allows a school governor, or member of staff, or a pupil to do so, or
- which fails to consider the risk as to whether a school governor, member of staff, or a pupil might do so, or
- which fails to act upon an assessed risk of a school governor, member of staff, or a pupil doing so,

could find themselves being successfully sued for compensation for discrimination, and/or harassment **and** damages for the consequent distress

experienced by a child. The cost of defending such a claim could end up being far more than the actual compensation awarded.

5.1. SCHOOL SPORTS

In the **Equality Act, s.195** addresses participation in sports, including school sports. Sport is defined as **a sport, game or other activity of a competitive nature**, but the provisions only relate where the activity involves:

- physical strength, stamina or
- (where the) physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex as competitors.

It is highly unlikely that these issues would be relevant to the sporting activities of pre-pubertal children. The division of sports such as school football usually only takes place once a child is aged 12, and only then in activities where physical strength, stamina or physique are relevant

s. 195 (2) potentially allows a school to prevent a trans child who was 12 or over from taking part in sports but the assessment must be **on an individual basis**, and only consider the relevant issues, that is **physical strength, stamina or physique**, and then only **so as to ensure**:

- fair competition, or
- the safety of competitors.

It could therefore be lawful for a school not to let a girl who was born male, participate in girls' sports, but only because her strength, stamina or physique were exceptional and then that would either make the competition unfair or there would be a real risk of harm to the safety of the other girls in the competition.

A school would have much more difficulty preventing a boy who was born female playing sport, after all schools do not ban small or under-developed teenage boys from sports.

5.2. SCHOOLS AND THE PUBLIC SECTOR DUTY

The **Equality Act 2010, Pt. 11, Advancement of Equality, Ch 1, the Public Sector Equality Duty** outlines issues that all public sector bodies including any schools and colleges that receive public funding **must** give regard to, when exercising their public functions.

S (149) of the **Public sector equality duty** states that Public sector bodies must perform their functions in such a ways as to work towards:

- eliminate(ing) discrimination, be it harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance(ing) equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster(ing) good relations between persons who share a relevant protected characteristic and persons who do not share it.

They should do this by **giving due regard** to:

- **remov(ing) or minimis(ing) disadvantages** suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- **tak(ing) steps to meet the needs** of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- **encourage(ing) persons** who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

Put simply, a school should be constantly be aware of the need to do everything it can to ensure that pupils who have any of the protected characteristics, including gender variant children, are treated equally in a way that meets their particular needs. This includes removing any disadvantages they might face, to ensure positive encouragement in order that they can have all the **aspirations, opportunities** and **achievements** they need for their personal success and full participation in the school's life, and their future life as citizens.

The school should also be aware of the need to foster good relations between all of the children, as well as different groups of children in the school. Just as this would mean ensuring all children knew why racism was unacceptable, it

would include ensuring that all pupils understand why they must treat a gender variant pupil with respect and dignity, and that any form of transphobia is unacceptable. The Act requires schools to ensure that they do what they can to:

- **tackle prejudice**, and
- **promote understanding**

between teachers and children, between individual children, and between groups of children including those children who are gender variant.

5.3. TRANSPHOBIC BULLYING AND HARASSMENT

The **Equality Act 2010, Pt 2, Ch 2; Other prohibited conduct, S. 26** prohibits harassment.

Harassment occurs when a person engages in unwanted conduct, including unwanted conduct of a sexual nature, related to a relevant protected characteristic, and it

- **violat(es) the person's dignity**, or it
- **creat(es) an intimidating, hostile, degrading, humiliating or offensive environment** for them.

S.26(3) specifically refers to unwanted conduct of a sexual nature or that is related to **gender reassignment** or sex.

Schools should have a **zero tolerance policy** for gender reassignment related bullying or harassment in the same way they have a zero tolerance or racism, sexism or the bullying or harassment of disabled students. Anything less could result in a successful claim for damages if a gender variant child (or member of staff) is victimised in this way.

The Department for Children, Schools and Families (DCSF) has details of schools with gender variant children who are attending in their preferred gender role. Head teachers might find it helpful to contact another head who has already had to address some of the issues that they are worried they might face.

5.4. CAN A CHILD BE TOO YOUNG FOR GENDER REASSIGNMENT ?

Where a child is pre-pubertal or a young teen, the question is often asked by those concerned for their welfare as to whether a child is old enough to indicate they wish to commence gender reassignment treatment.

The question is a question for clinicians who specialise in the provision of gender reassignment clinical services to children and young people, not for teachers. In England, we are very fortunate in having what is a unique specialist Gender Identity Development Service for children and adolescents at the Tavistock Portman Clinic in London.

So long as the school is assured that the child is being referred to or has been referred to Gender Identity Development Service, the question of the child's age should be irrelevant to the school, and with the support of the service and the school, children as young as 6 have happily settled into school in their preferred gender role. Sometimes other children in the school know of the child's gender change, in some cases they do not. What has been seen is that if the school and teachers are supportive of the child in their preferred gender role, and with support explain it clearly and without stigma to the other children in the school, children are happy to support their classmate in their change.

A school may be concerned if they find that the child's behaviour appears to be more about the parent's wish fulfilment than the child's own desire **and** the parents of the child have not referred or refused referral to the clinical specialists at the Gender Identity Development Service clinic.

In those circumstances the school may insist on the child seeing the local authority's educational psychology service. However, it would still be unlawful for a 'mixed sex' school to refuse the child access to schooling if the child wishes to attend in their preferred gender role.

To obtain protection from discrimination under the Equality Act 2010, the Trans person:

Does Not have to have yet fully commenced living permanently in their preferred gender role,

Does Not have to have undergone any medical treatment,

Does Not have to have obtained a Gender Recognition certificate,

Does Not have, themselves, to be trans

5.5. CHANGING A CHILD'S NAMES

It is **UNLAWFUL** for a person to use a different name in order to **DEFRAUD** or **IMPERSONATE SOMEONE**.

The explanation below uses the term **First Name** to include middle names and it also refers to names otherwise referred to as a person's

- **forename,**
- **given name,**
- **personal name, or**
- **Christian name.**

It uses the term **Surname** to include those names otherwise known as a person's

- **last name,**
- **second name (if not the middle name), or**
- **family name,**

and includes the term maiden name, which is the pre-marriage surname of a woman before she took her husband's surname.

Otherwise, in UK Law, any person is entitled to use whatever first name(s) they wish and they can change their first name(s) at any time without using any formal mechanism. The rule for changing a Surname is slightly different if the person is a child under the age of 16.

Formal mechanisms for changing names do exist (see below) but they do not have to be used - a name can be changed simply through usage (by what is known as custom and practice), except in the case of the surname of a child under the age of 16.

5.5.1. Name Change if Under 16

A child under the age of 16 can change their first name through custom and

practice or by using a more formal process.

There is only one law in existence that relates to the changing of a person's name.

That law exists in order to ensure that a separated parent does not change a child's surname without the permission of the other parent. For example, a mother may not change a child's surname to her maiden name to prevent the child's non-resident father having access. This restriction only exists for a child under the age of 16. A child over the age of 16 can change their name by custom or practice, or by a more formal means, at any time.

Unlike a person who is 16 or older, a child under the age of 16 **requires the permission of ALL PEOPLE WHO HAVE PARENTAL RESPONSIBILITY** to change their surname.

To change the surname of a child requires all people with parental responsibility (usually both parents) to attend at a notary's office (normally a local solicitor's firm) where they must jointly swear a **Statutory Declaration of Name Change**. This normally requires the parents to attend together.

Pt. 6. Gender Variance & Human Rights .

6.1. SCHOOLS AS PUBLIC BODIES

I**N ADDITION** to the law laid out above there are further legal requirements placed upon schools via the legal obligations of the state through both **The Human Rights Act 1998** and the **European Convention of Human Rights**.

Human Rights are individual rights which are held by virtue of residence in a state which is a signatory of the UN Declaration of Human Rights and the European Convention on Human Rights. Human Rights are rights which can be claimed against the state or any emanations of the state. This includes government departments, Local authorities, and other Public sector bodies including state funded schools, or schools which receive funding of any sort from a public body, e.g. an independent school that receives funding for children through Local Authority grants.

Most schools are an 'emanation of the state', in that they are Public bodies in receipt of state funding. Their purpose is to perform a function of the state; the education of children. As such, it is the Department for Children and Services legal responsibility to ensure that the school does not contravene the individual Human Rights of each of the children in the school.

One of the easiest ways of understanding the full range of Human rights that each person, including children, has under the Human Rights Act and the European Convention, are what we refer to as the **FREDA Principles**.

6.2. THE FREDA PRINCIPLES

The **FREDA principles** inform the idea of Human Rights as qualified under the Human Rights Act 1998. The Act requires that the state gives all people, both resident in, or citizens of, the United Kingdom their core Human Rights as embodied in the European Convention on Human Rights (the Convention). The Principles are a very useful tool in determining whether contraventions of a

person's human rights are taking place.

The **FREDA Principles** require all of those people who work in a Public Sector Body, including state schools, and any sub-contractors (e.g. a receptionist from an agency) who work with them, to respect the Human Rights of others, and to perform their Public Sector Duties as contained in the Equality Act 2010 (see section 1.5). The Freda Principles afford everyone the right to be treated with

- **F**airness,
- **R**espect,
- **E**quality,
- **D**ignity, and
- with recognition of each person's right to their personal **A**utonomy

The following sections address the **key Human Rights** of gender variant children in school.

6.2.1. The Child's Right to Dignity & Self Determination

Human rights law does not distinguish between children and adults, human rights are rights that each human person is entitled to.

Whilst there is no express reference to dignity in the European Convention on Human Rights (ECHR), the Convention expressly states that it is based on the Universal Declaration of Human Rights (UNHDR), which states:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. (UNHDR Art. 1)

or, as a Plain English version might say:

Each child/person is born equal and given respect for their dignity and their rights as free people. They are able to think and know right from wrong. All people should be friendly and kind to each other.

Additionally, the United Nations Convention on the Rights of the Child (1989), which now makes up part of the UNHDR, states:

...children have rights to self-determination, dignity, respect, non-interference, and to make informed personal decisions (UNCRC)

Whilst it is not possible for an individual to bring a case against a state for breaching the rights under UN Declaration, the explicit assertion of a child's right to dignity within the UNHDR generally makes that right part of the European Convention on Human Rights.

In turn, the **Human Rights Act 1998** expressly makes the European Convention part of UK law. Thus, a child's Human Rights under English law include the child's sense of dignity. As such, the English courts can be used to enforce that right to dignity, or to prevent something that would contravene that right.

6.3. A CHILD'S RIGHT TO A PERSONAL AUTONOMY & GENDER IDENTITY

In the case of **Pretty v United Kingdom** [2002]¹⁵ the European Court of Human Rights stated that, under Article 8 (the right to private and family life) of the European Convention on Human Rights:

- The concept of a 'private life' is a broad term and not susceptible to exhaustive definition.
- It covers the physical and psychological integrity of a person and can embrace aspects of an individual's physical or social identity. Elements such as, gender identification, name, sexual orientation, and sexual life fall within the personal sphere protected by Article 8.
- Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the world outside.

In the later cases of **Goodwin v UK Government** [2003] and **I v UK Government** [2003]¹⁶, both of which concerned the Art. 8 rights and Art.12 (the right to marry and found a family) rights of trans people, the European Court of Human Rights expressly confirmed the rights of trans people to self-determination and personal autonomy. Notably the court stated that

- ... the very essence of the Convention is respect for human dignity and human freedom. Under **Article 8** of the Convention in particular, where the notion of **personal autonomy** is an important principle underlying the interpretation of its guarantees, protection is given to the personal

¹⁵ *Pretty v United Kingdom* [2002] ECHR, 35 EHRR1

¹⁶ *Goodwin v. UK*[2003] ECtHR 35 EHRR 447 and *Iv. UK* [2003] ECHR(App. No. 25680/94)

sphere of each individual, **including the right to establish details of their identity as individual human beings** (Goodwin, para70).

As such, the European Court of Human Rights has confirmed that under Art. 8 of the European Convention, each one of us, including children, has a Human right to our personal autonomy. This protects the personal sphere of our life, and our own developmental choices. This right includes the right of each person, including each child, to establish his or her own gender identity.

As these two cases concerned the rights of trans people to their identity, the decisions have asserted that right as part of the dignity and autonomy that gender variant children are also entitled to. Consequently, the Human Rights Act 1998 can be used to enforce these rights..

6.3.1. A Child's Right to Personal Autonomy: School Uniform

Under Art. 8, states may, under certain circumstances, limit the rights of an individual but any restriction has to be both reasonable and proportionate. It is clear from the court's decision in the cases of Goodwin and I that there would have to be a very substantial reason before the state or its emanations would be allowed to stop the self-determination of the gender identity of an individual.

In Kara v. United Kingdom [1998],¹⁷ the European Commission rejected as inadmissible a man's claim that his local authority employer's dress code contravened his rights by refusing him permission to wear a dress to work.

However, the commission did confirm that undue restrictions placed upon an individual's choice of dress could potentially interfere with a person's Convention rights to personal autonomy, privacy, religious freedom, and freedom of expression. In Kara, the employer's dress code was considered a reasonable workplace requirement. The court did not address the question of whether a cross dresser (transvestite) had a right to wear women's clothes to work.

Guidance from the Equality and Human Rights Commission¹⁸ confirms that schools which requires girls to only wear skirts or dresses, could now be held to

¹⁷ Kara V. UK Appl No 36528/97, 22 Oct 1998

¹⁸ EHRC (2011) Provision of Goods, Facilities and Services to Trans People — Guidance for Public Authorities in Meeting your Equality Duties and Human Rights Obligations

contravene the sex and gender equality elements of the Equality Act 2010. Recent guidance from the Department for Education also states that schools “should also bear in mind the concept of “indirect” discrimination; the application of a requirement, which, although applied equally to everyone, puts certain people at a particular disadvantage because of their gender, race, sexual orientation, religion or belief or **gender reassignment**.”¹⁹ Any such requirement will need to be justified as a **proportionate way of achieving a reasonable objective** for it to be lawful, and the policy will need to be flexible enough to allow for necessary exceptions.

Schools need to ensure that uniform rules do not contravene a child’s Human Right to their personal autonomy, dignity, and freedom of expression. Consequently, if a school requires boys to wear long trousers with a masculine cut, or of a certain material, potentially that could contravene a child’s personal autonomy, dignity, and freedom of expression.

It is quite clear that schools must allow a gender variant child to dress and present in their preferred gender, so long as this was **in accord** with the **reasonable** dress code of the school.

6.3.2. A Child’s Right to Privacy

When a child who has transitioned joins a school, or a child transitions in school, the question of their, or other children’s privacy often arises. This may be in the context of possible press and media interest, whether to inform other children about the change of gender, or the other children’s parents.

Under **Art. 8**, all people, including children have **a right to privacy**. In the cases of **Goodwin** and **I**, the European Court of Human Rights held this to include a general right to privacy for one’s medical history. As such, disclosure that a child or person is undergoing gender reassignment treatment could contravene that right.

¹⁹ Department for Education (2013) School uniform: Guidance for governing bodies, school leaders, school staff and local authorities,
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269113/school_uniform_guidance_2013.pdf

6.3.3. The Reaction of Other Children's' Parents and Privacy

Clearly sensitivity is required for a child to successfully transition and attend school. Schools may well have to inform other parents of this happening, and whilst this may be unavoidable, it can only happen after discussion with the child and the child's parents, **and with their agreement**.

If agreement is difficult to obtain, the school may explain that without an agreement on some sort of process, it may well be difficult for the school to fulfil its obligations to protect the child from the behaviour of other children. The advantage of being able to inform other parents, is that at the same time, the school is able to inform the other parents of their obligations to ensure the school is able to fulfil its educational purpose without potential disruption.

Bearing in mind the responsibilities the school has under the **Equality Act 2010**, the **Public Sector Duty**, and the **Human Rights Act 1998**, when informing other parents, the approach should be formal and preferably take the form of a written letter. Press for Change recommends that any letter be sent out in advance of a child's transition, allowing time for questions to be raised and addressed.

The letter **MUST NOT** include the **name** of the child or which class they are in, or which gender they are changing to. Though undoubtedly this news will get out, especially if the child is returning to the same school, non-disclosure allows the school, if approached by the Press, the plausible ability to say no comment to any request to confirm the child's identity. It also means parents, teachers and children will have the ability, in the early days when there might be Press interest, to deny any knowledge of who the child is.

Potentially, a school could be held responsible for any harm, if they have not taken action to prevent pupils, teachers or parents breaching the privacy rights of a gender variant pupil.

As such, the letter can clearly state the **child's right to privacy under Article 8 of the Convention** and the school's legal obligation to do everything possible to safeguard this right.

The letter should make it clear that if any person, be they a teacher, other member of staff or a parent, approaches the press, or gossips in such a way as to allow others to approach the Press about the child's change of gender, the

school will take legal action. The school should state clearly that it would ensure the person who disclosed would be included as respondents to any claim for invasion of privacy and harm made on behalf of the gender variant child.

A letter to parents also allows the school to tell parents of their responsibilities for their own child's behaviour in and outside of school, and that the school expects parents to work with the school to ensure the

introduction of the issues to their children in an appropriate and positive manner.

Some parents need to be reassured that having a gender variant child in school will not influence their own child's gender identity. Clearly, the only exception might be where a child has previously been too frightened to express what they feel about their own gender. This, however, would be a pre-existing condition, and if that is the case, in reality the presence of a gender variant child might enable a child to express previously repressed concerns. This is an issue for that child, and has no relevance to the gender variance of any other child, Gender variant identity is not 'catching'.

It might be worthwhile including the fact that whilst the model Naomi Campbell was only awarded £3500 for breach of privacy after successfully suing the Mirror group for publishing a photograph of her leaving a Narcotics Anonymous meeting, the Mirror group also incurred over £1 million in costs

6.3.4. Materials to Help Explain Gender Variance

It is advisable in these circumstances for schools to use the materials available (see above) from GIRES and the DCSF. Press for Change along with the Centre for Excellence in Leadership have also produced a toolkit and teaching resource 'Leading Trans Equality: A Toolkit for Colleges'. Targeted at college managers, the toolkit is also designed to be used as a self-learning pack, and a teaching resource. Many types of teachers have found it a useful, easy to use kit for learning about gender identity and the law. It is available free to schools from the [Centre for Excellence in Leadership](http://www.cel.leeds.ac.uk), Lancaster University.

Schools should also consider obtaining specialist advice on training, or low cost training from organisations such as Press For Change www.pfc.org.uk, or GIRES www.gires.org.uk.

Press for Change advise schools and other organisations not to use local transgender support groups, or individual trans people for advice. They will lack knowledge of resources, rarely be aware of the latest developments in the field, and very few are au fait with the legal complexities. Individual trans people also have a tendency to view their 'life story' as being 'how it happens', whereas the national support organisations are far more aware of the wide diversity within the transgender community, and they have an 'up to date' knowledge of the issues.

6.3.5. The Press and the Child's Right to Privacy

In **Mosley v United Kingdom** [2010], the European Court of Human Rights rejected the proposition that the right to privacy under Art. 8 required member states to legislate to make newspapers first warn individuals about whose private life they were going to print stories.

In recent Press stories, particularly about primary school children who have changed their gender, the news media have shown awareness of the child's right to privacy, and have not disclosed details by which they or the school could be recognised. However, this does not guarantee the future behaviour of reporters or newspapers.

If the Press are given information about a gender variant child attending school, whether they print a story will depend upon several factors:

- the particular reporter; freelance reporters are far more likely to seek publication as they are income dependent upon selling stories to the highest bidder,
- the particular newspaper; some, such as the red tops, are more likely to print than others,
- the details they can discover about the child, the child's parents or where the child lives; the more information a reporter can obtain, the more they can confirm the story and therefore, the more likely they are to print the story,
- the child's age; the younger the better, as this is considered a more interesting story.

In 2005, the Press Complaints Commission (PCC) expanded **Clause 12** of its code to cover discriminatory press reporting of transgender people. Following

the Gender Recognition Act of 2004, the PCC replaced the word 'sex' in clause 12 to read 'gender', so that it now reads

- **(12i)** The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.

Sub-clause **(12ii)**, protects trans people from the publication of discriminatory details that aren't relevant to a story.

A complaint made to the PCC must be made by the person, or organisation concerned. As such the child, the child's parents or the school could raise a complaint to the PCC. However to be successful the complaint must be about either:

- the use of prejudicial or pejorative references to the child's gender variance, or
- the publication of details that are irrelevant to the story.

It has been rare for the PCC to uphold complaints made by trans people, however in 2010, the PCC did uphold a complaint that whilst the Sunday Life newspaper had been entitled to publish a story about concerns over the suitability of the complainant's employment (the complainant was a trans woman employed as a counsellor by a rape crisis centre);

her gender identity should not have been open to ridicule. Taking into account the full context of the piece, the Commission considered that the use of the word 'tranny' - which was a needless abbreviation, held by many to be offensive - was pejorative. The complaint was upheld on this point.²⁰

PfC advise trans people and organisations that there are 2 ways to handle press interest:

NO COMMENT. *Everyone who is approached should say nothing more than no comment.*

In those circumstances, journalists will not be able to confirm the details of

²⁰ Adjudication issued 04/01/10 at <http://www.pcc.org.uk/news/index.html?article=NjEyNw==>

the story without undertaking a lot of hard work.

News is now a very quick medium, and as such journalists will rarely take the time to do the work to confirm a story in other ways.

Freelancers in particular will rarely take the time to confirm a story in other ways, as it will not be proportionally financially rewarded. Without confirmation, editors will not allow a story to be published in case it turns out to be untrue and they face being sued for defamation.

However, if another child's parent has disclosed the story and shown the letter you have sent to them; that will be considered confirmation.

THE EXCLUSIVE. *Offering an exclusive to a national newspaper which has a social conscience, will provide some protection.*

We usually recommend the Independent or the Guardian. This will result in a sympathetic and intelligent version of the story and generally the newspaper will endeavour to protect the privacy of any vulnerable parties, especially children.

Exclusives prevent other newspapers from printing any aspect of the story. The newspaper industry respects the rules of exclusives – it protects all of their interests in obtaining exclusives. However there are rules:

Don't give an exclusive to a freelance reporter. *They can sell the story on to as many news groups as they like.*

Do not give an exclusive to a non-national newspaper. *They will invariably be part of a newspaper consortium and will pass the story throughout the consortium.*

Never take money for a story. *If paid for a story, the newspaper will want to obtain due returns and will sell on the story, or do a major splash which even if written sympathetically will have headlines and subheadings which make the story out to be far more salacious than it is.*

Ask for reading rights, *i.e. the right to read the story and advise whether you are quoted within context, and whether there are any inaccuracies. You will never gain editorial rights, but most will allow you to ensure what you have said is written in a way which is accurate*

Undoubtedly, though, the best way forward for all, and especially the child concerned, is for there to be no press interest or publicity.

6.4. THE PROTECTION FROM HARASSMENT ACT 1997.

The **Protection from Harassment Act** 1997 could afford a mechanism for dealing with harassment or persistent unwanted contact whether from the Press or any other person. The Act makes it a crime for a person to:

s.1(1) Pursue(s) a course of conduct—

*which amounts to harassment of another, **and***

which he knows or ought to know amounts to harassment of the other.

To obtain a conviction, the perpetrator should:

know or ought to know that it amounts to harassment of the other.

The perpetrator will know:

- if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

If

- the gender variant child,
- a member of the child's family,
- a member of school staff, or even,
- another parent,

were to receive an unsolicited advances **on three or more separate occasions** from a member of the media, or any other person taking an interest in the child's circumstances, they would be entitled to call the police and press a complaint of harassment under the **Protection from Harassment Act** 1997.

The separate unsolicited advances can include phone calls, emails, letters, or physical interactions such as someone knocking at the door.

The person making the complaint would either have had to make it clear that they did not want the advance, or it would have to be obvious to a reasonable person that the advance was unsolicited (for example, approaches made to a child would be obviously unwanted). Conviction can also lead to a restraining order to prevent further harassment.

A successful conviction can be used as evidence in the Civil courts for a claim for damages for (among other things) any anxiety caused by the harassment, and any financial loss resulting from the harassment.

Finally, if it happens that any of this gets out of hand, and the child becomes frightened by whatever is happening, whether it is press intrusion, or bullying by other children, we would recommend the most obvious course of action; that is to remove the child. We recommend, in these cases, for the family to uproot for at least a week, maybe to take a short holiday, or visit family, to allow management of the concerns without risk of ongoing harm to the child.

Pt. 7. Appendix A: A Gender Variant Childhood

Peter Williams* tells how, at the age of 19 in 1974, he told his mother, Brenda, he was intending to undergo gender reassignment. Her reply was “Oh dear, I had hoped you would manage just to be a lesbian”. (**Names have been altered*)

Recovering from the shock that, in 1974, his mother knew a word like lesbian, he asked her about how long she had known he was different.

Apparently, Brenda had started noticing differences from about the time he had been aged 4. Peter was born female, and given the name Joanna, but from being a toddler his mother had watched, with alarm, her daughter’s increasingly masculine preferences from when ‘she’ had been a very young child.

In the late 1950s, before starting school, Peter had lived in the tartan ‘trews’ his mother had made him. However, as school started, there were endless tantrums and arguments about clothes, haircuts and shoes. He rejected almost everything Brenda bought.

Peter preferred playing with his brothers rather than his sisters. His best friend at primary school was Kevin. He rejected feminine Christmas presents such as dolls, and he was frequently found dressing up in his brother’s cowboy suit. When, he was 8, Peter’s father tried to curb his increasingly boyish behaviour by banning him from playing with Kevin, which caused Peter great distress as he had no idea what was wrong in what he was doing wrong, or why it was wrong.

Nobody spoke directly about ‘the problem’; he was just in trouble for the things he liked; his friends, his football, his superman scrapbooks, his comics. Peter’s father regularly used a yard stick to ‘smack’ Peter for his aberrant behaviour, something that continued until just before he left home at the age of 18.

Going to primary school felt to Peter, like being sent out to be tortured every

day. The bullying by other children, especially boys, but also girls, felt endless. He had been 'beaten up' several times, once by 2 boys who lived next door to the family. The other children from the street including his brothers and sisters had stood round in a circle egging on the perpetrators for what seemed like hours.



Peter Williams when a girl (on the left) with his sisters.

When he was 10, (1964) Peter had been attacked by a group of older boys, who had tried to sexually assault him in the outside brick built toilets block that schools had at that time. It was about that time when Peter suddenly realised, at the School Sports day, in which there were girls and boys races, that he was 'always going to be in the wrong race'. His emotions were shattered by the realisation, but he felt unable to speak to anyone at all about how he felt.

Brenda could see how unhappy Peter was, but at this time she really could not put her finger on what was wrong. She assumed he was a tomboy and that it was a phase he would grow out of. However, she was also sure that if he had to go to the same school as his sisters, he just wouldn't. She arranged for him to take the entrance exam for a girl's independent school and he won a scholarship place.

Secondary school, despite being an girls school, proved to be a huge relief. Peter made good friends, who were tolerant of his 'eccentricities'. Nobody expected him to be interested in makeup, girl's fashions, or 'boys'. It was very much live and let live, & school studies were what really mattered. There were

one or two unpleasant instances, but mostly the other girls, if not his friends, ignored him.

At school Peter had 'crushes' on girls though they were never acted upon, he would not have known how to start a relationship. Mostly he played as much sport as possible, and despite not being a good athlete, in his final year he was made cricket captain, house captain, and also deputy head girl. In the girl guides he had hiked & camped in the hills every other weekend, completed all the 'badges' required to become a Queen's Guide, and took up climbing and potholing as soon as he was old enough to join a club. From the age of 14 he was stage manager for all of the school plays, and he organised the schedules for sports tournaments.

By keeping as busy as possible, Peter tried to fill his mind with activities rather than dwell on what were his real issues. By the time Peter was 14, Brenda had given up fighting to try to make him wear feminine clothing, and in return he had agreed to a simple shirt-waister dress for special occasions.

Brenda could see him doing his best to try and please everybody, even following his sisters and becoming the Church's Harvest queen at the age of 15. Whilst he had done it to please Brenda, he had refused to have his hair 'set' for the day. Peter got through the day, including having to wear a long dress with a train, by making as much light of it as possible, and working hard to make it a fun day for the older ladies and gents at church for whom it was the highlight of the year. Brenda realised at the end of the day, that it was the last time he would wear a long dress. She concluded that he was going to be a butch lesbian, and she had several long talks with the family GP about it.

Brenda did not know until 30 years later, that when Peter was 15 a friend of his father's offered him a lift home from school. The man then proceeded to drive to an outlying place where he raped Peter, with the words "I know what you need to cure you".

Peter was unable to talk about any of this at the time. At home, his father strongly disapproved of the 'thing' that was the cause of the bullying and assaults. Peter felt he had to pretend to be someone else all of the time, just to avoid his father's fists. He was sure if he had said anything to his father about the rape, he would be told he was a liar, and things might get far worse. Instead he spent two months in silence, terrified in case he was pregnant. It was the only time in his life he welcomed menstruation.

For many, many years he truly felt he had somehow invited everything that had happened just because he was who he was, and so had deserved all of the pain he experienced.

When Peter left school and went to teacher's training college he was still 'female'. Thinking he was a lesbian, Brenda was very surprised when he visited home with first one boyfriend then another, even more so because they were both very handsome, great fun and his sisters were extremely jealous. For some boys, she realised, Peter must have seemed like more of a pal, because as a girl he enjoyed sports and outdoor activities, and had masculine interests such as football and cars in ways, which other more feminine girls did not.

In fact, Peter, had realised that he might be bisexual. He had found himself falling in love with both girls and boys when a teenager. However, when he left home, he felt unable to have any sort of sexual relationship because he could not stand the idea that somebody would want to desire him or his body as a woman. At the age of 18, he told Brenda he was seeing a doctor and was going to have a 'sex change' to become a man.

Epilogue

For almost 30 years, Peter felt deeply ashamed of himself for being transsexual, until he finally came to terms with what had happened. Over the years, Brenda and Peter built up a very good relationship, and she became very proud of him, and, even better, very proud of him as a transsexual man.

Five years after commencing gender reassignment treatment, Peter met the woman he has now been with for 35 years, his best friend whom he married as soon as the law changed and he was able to get his preferred legal gender recognised. They have a family, his wife's biological children by donor insemination, and he reckons he has a wonderful life.

Peter never forgave his father for the physical and emotional punishments he received at his hands. He had decided he was dead, at least to him, long before his father actually died.

In 2013, forty years after leaving school, Peter attended his class reunion for the first time. His initial terror at the prospect turned out to be completely unfounded and his ex-school friends and teachers were extremely welcoming – it was almost as if he was a celebrity.

They told him that it had made complete sense when they had found out he

had undergone gender reassignment - it seemed, that he truly had been the only boy in an all-girls school.

At the reunion, he commented how little his classmates had changed. They turned to him, and responded

“apart from the beard, neither have you – except now you are happy”.

There have been huge changes in the way we now mostly regard gender variant children. This story is included though, because many of its worst features are still seen today, in the lives of some young trans people.

Taking responsibility for the gender variant child and their experience of childhood can be viewed as tremendously difficult and many parents still do not understand, and will punish children rather than seek help and advice for them. It is a responsibility, but not impossible. We all promise our children on the day they are born that we will do anything, even give our lives, for them to be happy.

When a child tells you they want to be a member of the opposite sex, then we can react in two ways; we can try and cure them, and make them and ourselves almost certainly miserable in the process, or, we can smile and get on with helping them be happy, fulfilling that promise we made to them,

Peter discovered at his school reunion that many of his teachers had recognised that he was deeply troubled, that he came into school with unexplained bruises – not serious but noticeable – and that he was not going to grow up into a heterosexual woman.

One teacher did take him in at the end of his final year at school, when his father threw him out. Years later, he told her how much he needed to thank her for that, and he said “you saved my life” – her reply was “surely not”.

Peter replied “definitely yes.” For 6 weeks, she allowed him to live in her spare room until he got a job, and then a room of his own. Without that he would almost certainly have not coped, and probably he would have either killed himself, or got murdered sleeping rough on the streets one night, by some other man who thought he could cure him.

© The End

71.1.a. Bibliography

Brown, G., 1988. Transsexuals in the military: flight into hypermasculinity. *Arch Sex Behav.*, 17(6), pp. 527-537.

Coleman, E., Bockting, W., Whittle, S. & et al, 2011. Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, version 7. *International Journal of Transgenderism*, Volume 13, p. 165–232.

GIRES, 2008. *Guidance on Combating Transphobic*, Ashtead: GIRES.

NHS Scotland, 2012. *Gender Reassignment Protocol*. [Online]

Available at: http://www.sehd.scot.nhs.uk/mels/CEL2012_26.pdf

[Accessed 15 05 2013].

Royal College of Psychiatry, 1998. *Guidance for the management of gender identity disorders in children and adolescents*. [Online]

Available at: <http://www.rcpsych.ac.uk/files/pdfversion/cr63.pdf>

[Accessed 15 05 2013].

Steensma, T. D., Biemond, R., de Boer, F. & Cohen-Kettenis, P., 2011. Desisting and Persisting Gender Dysphoria after Childhood: A Qualitative Follow-up Study. *Clinical Child Psychology and Psychiatry*, Volume 16, pp. 499-516.

Wallen, M. S. & Cohen Kettenis, P. T., 2008. Psychosexual Outcome of Gender-Dysphoric Children. *J. Am. Acad. Child and Adolescent Psychiatry*, 47(12), p. 1413–1423..

West London Mental Health Trust, 2012. *Gender dysphoria services: a guide for General Practitioners and other healthcare staff*. [Online]

Available at: <http://www.wlmht.nhs.uk/wp-content/uploads/2013/05/Gender-dysphoria-guide-for-GPs-and-other-healthcare-staff>

[Accessed 15 05 2013].

Whittle, S., Turner, L. & Al-Alami, M., 2007. *Engendered Penalties: Transgender and Transsexual People's Experiences of Inequality and Discrimination*, London: Cabinet Office.

7.2. OTHER READING

GIRES et al (2008) Medical Care for Gender Variant Children and Young People: Answering Families' Questions, London: COI for the Department of Health available at:

<http://www.gires.org.uk/assets/DOH-Assets/pdf/doh-children-and-adolescents.pdf>

Groskop, Viv (2008) 'My body is wrong' Should teenagers who believe they are transgender be helped to change sex?, in *the Guardian*, 14 August, available at:

<http://www.guardian.co.uk/society/2008/aug/14/children.youngpeople>

Hoffman, Sarah (2007) LET THEM BE / What's the proper parental response when faced with a kid who's gender variant?, in the *SFGate*, 8 April, available at:

<http://www.sfgate.com/magazine/article/LET-THEM-BE-What-s-the-proper-parental-response-2566077.php>

Kennedy, Natacha., Hellen, Mark. (2010) Transgender Children, More than a Theoretical Challenge, in the *Graduate Journal of Social Science*, 7:2:25-43.

McKillop, Joey T. (----) Ways to make your youth group a safe and welcoming place for young transgender people, Ashstead, GIRES. Available at

<http://www.gires.org.uk/assets/YoungstersTreatment/youthgroup.php>

Whittle, Stephen., Turner, Lewis, (2009) Leading Trans Equality: A Toolkit for Colleges, Lancaster: Lancaster University Centre for Excellence in Leadership

Pt. 8. National Support Organisations

PRESS FOR CHANGE: BM NETWORK, LONDON WC1N 3XX

'The UK's Leading Experts on Transgender Law'.

Campaign for equal civil rights for Trans people. Provides free legal help and advice for individuals, information and training for professionals, speakers for groups. Produces Legal Guides and other law related publications.

Helpline: **+44(0)08448 708165** (Mon-Thurs 10am – 5pm)

Email: office@PfC.org.uk

website: www.PfC.org.uk

GENDER TRUST: PO Box 3192 BRIGHTON BN1 3WR.

Offers advice and support for 'male to female' Trans women. Also partners, families, carers and allied professionals. Has a membership society and produces a magazine: "Gems".

tel: **01273 424024** (office hours), Helpline: **07000 790347**

email: info@gendertrust.org.uk

website: www.gendertrust.org.uk

FTM NETWORK: 35A FORE STREET, WELLINGTON, TA21 8AG

Offers advice and support to "female-to-male" Trans men, and to families and professionals. Also a "buddying" scheme, camping and hiking, other sports.

Newsletter; "Boys Own" and an annual national meeting.

Currently NO Helpline

email: info@ftm.org.uk

website: www.ftm.org.uk

BEAUMONT SOCIETY: 27 OLD GLOUCESTER ST, LONDON WC1N 3XX.

Provides advice and support for cross dresser, but also has some Transsexual women as members. Runs local groups, wives group (Women of the Beaumont Society, WOBS) and produces a newsletter and publications.

Helpline: **01582 412220** (24/7)

email: enquiries@beaumontsociety.org.uk

website: www.beaumontsociety.org.uk/

MERMAIDS: BM MERMAIDS LONDON WC1N 3XX.

Support and information for children and teenagers who are trying to cope with gender identity issues. Also advice and support for their families and carers. Please send SAE for further information.

Helpline: **0208 1234819** (12 noon - 9pm Monday to Saturday when staffed).

Email: info@mermaidsuk.org.uk website: www.mermaidsuk.org.uk

DEPEND: BM DEPEND, LONDON WC1N 3XX

An organization offering free, confidential and non-judgmental advice, information and support to all family members, partners, spouses and friends of transsexual people.

Email: info@depend.org.uk website: www.depend.org.uk

The End

Pt. 9. Have You Found This Guide Helpful?

Then please consider making a donation to Press For Change(PFC)?

Press for Change survives through donations from supporters and members of the transgender community. Working on research, attending meetings and campaigning always means we have a lot to do, so if you could spare any small amount of money for a donation you can ensure every penny is used wisely.

WHY WE NEED DONATIONS

Since its formation in 1992, Press For Change has received and spent around £45,000 in donations, which equates to just over £2,000 a year. That makes us almost certainly one of the most frugal lobby groups in existence — operating for twenty years on this tiny amount of money has been a massive challenge in itself. There are many more things PFC would like to be able to do more on but are limited to our resources financially.

YOU can help us continue to provide a service of real value to those that are transgendered or questioning their gender identity. With the money donated to PFC we've achieved changes in legal protection and support for trans people which were all at one time considered impossible dreams. Legislation and judicial case law affecting employment rights, the right to NHS treatment, and the Gender Recognition Act have all been shaped by the influence of PFC lobbying and advising politicians and courts. That work still goes on to influence the shaping the protections which we now have with the equality act, but that still need to go further. Every day we are in some kind of contact with civil servants, national agencies and broadcasters arguing a sound case for the all-round improvement in the way that trans people are supported and enabled to live productive discrimination-free lives.

Most of this work is carried out by volunteers and involves travel and other out-of-pocket expenditure — all of which needs to be found to cover and ensure those volunteers are credited for the time that they put in from somewhere.

Please Consider Making A Donation – details are on the next page.

HOW TO MAKE A DONATION TO PRESS FOR CHANGE:

PayPal: You can donate using your CREDIT or DEBIT CARD. We can now accept payment of over £10 using Paypal. You do not need a paypal account to use this method of payment. Please go to www.paypal.com & go direct to Paypal. The payments are to be made to **Press For Change**, the required payment email is **office@Pfc.org.uk**

By Cheque: You can WRITE A CHEQUE in favour of Press for Change and send it to our address: Press For Change, Yewbank House, 24 Mauldeth Rd, Stockport, SK4 3NE, United Kingdom

By Online Banking: You can pay direct, including making a **regular standing order payment**, using your Online or Telephone Banking from the UK or anywhere in the world, direct to our bank. Simply use your online or telephone banking system, or visit or write to your bank and ask them to transfer the amount you want to give to:

Press for Change,

c/o **Natwest Bank PLC,**

PO Box 4115, Hornchurch, Essex, RM12 4DF

Bank Sort code: **60 24 77**

Account number: **19243766**

If making an international donation then you will also need the following IBAN and BIC/Swift Codes

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Please Note, the bank makes a £7 charge for each credit received from the international banking system (CHAPS), so please bear this in mind when deciding how much to give.

If you need an acknowledgment then email us at office@Pfc.org.uk and we'll confirm when your payment has been cleared.

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